

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

ORDER

-against-

05-CR-060 (NGG)

VINCENT BASCIANO,

Defendant.

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NICHOLAS G. GARAUFIS, United States District Judge.

In a letter dated October 22, 2010, submitted ex parte, defense counsel stated that Defendant “read me a letter he had sent to Your Honor concerning confidential defense matters, a letter that he requested remain under seal.” On November 1, 2010, the court received the hand-written letter referred to above and thereupon ordered “Defendant to cease sending letters directly to the court. Defendant should send any future letters to his attorneys, who will confer with Defendant as to what information, if any, should be provided to the court for filing on the public docket. . . . [A]bsent a compelling reason for doing otherwise provided by defense counsel, all letters from Defendant sent to the court through defense counsel will be placed on the public docket.” (Docket Entry # 965 at 1-2 (emphasis added).) The court further noted that “Defendant has three attorneys. It is the role of those attorneys – not this court – to make strategic decisions on behalf of Defendant.” (Id. at 1.)

On November 5, 2010, defense counsel submitted to the court another ex parte letter and included the unredacted letter from Defendant addressed in the court’s November 1, 2010, order. Defense counsel argues in his letter that “Defendant’s letter and this cover letter should be part of the record and maintained under seal for a ‘compelling reason.’” Defendant’s “compelling reason” for the letters to be filed under seal is that the letters are “part of an ex parte application,”

contain “confidential defense information, the disclosure of which will prejudice Mr. Basciano,” and disclosure of the alleged facts and arguments therein is necessary to “protect [Defendant’s] Sixth Amendment rights to counsel and compulsory process.”

Defendant argues for an extraordinary procedure, in which this court would open its docket to ex-parte and under-seal filings by the Defendant himself and his counsel for the purpose of putting alleged facts and arguments into the record, which the prosecution would have no ability to contest, presumably for consideration in post-trial motions and on appeal. Accordingly, Defendant is ORDERED to show cause why the defense should be permitted to make filings ex parte and under seal for the purpose of putting evidence and arguments into the record. If the defense would like to proceed with its application to file ex parte and under seal, it shall submit a memorandum of law on the public docket by November 17, 2010. The Government shall respond by November 23, 2010. In the interest of not causing prejudice to the Defendant, the court will hold the October 22, 2010 letter and the November 5, 2010 letter and enclosure, pending the Court’s decision as to whether such filings will be permitted.

For the purposes of clarity and judicial economy, Defendant is ORDERED that, so long as he is represented by counsel, all correspondence with the court shall be drafted and submitted by defense counsel. No letters prepared by Defendant shall be submitted to the court, unless they deal specifically and solely with any concerns Defendant may have regarding the effectiveness of his representation. The court does not suggest that Defendant has grounds for questioning the effectiveness of his counsel, who have appeared to represent him vigorously and ably. The court

only carves out this exception so as not to foreclose Defendant's ability to communicate directly with the court for that limited purpose, if it is necessary.

SO ORDERED.

Dated: Brooklyn, New York
November 11, 2010

/s/ Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge